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11 AMERIS BANK d/b/a BALBOA CAPITAL CORPORATION
12

13 THE UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15

16 AMERIS BANK, a Georgia state-
17 chartered banking corporation, doing
business as BALBOA CAPITAL
18 CORPORATION,

19 Plaintiff,

20 vs.

21 GIC LOGISTICS INC., a Wisconsin
corporation; ION CHISTRUGA, an
22 individual; and NINA CHISTRUGA, an
individual,

23 Defendants.
24

Case No. 8:25-cv-00963-DFM

[Honorable Douglas F. McCormick]

**BALBOA CAPITAL
CORPORATION'S MOTION FOR
DEFAULT JUDGMENT AGAINST
DEFENDANTS**

FAC Filed: May 21, 2025
Trial Date: None

1 TO THE COURT, ALL PARTIES, AND ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on September 16, 2025, at 10:00 a.m., or as
3 soon thereafter as the matter may be heard, in Courtroom 6B of the Ronald Reagan
4 Federal Building and United States Courthouse, 411 W. Fourth St., Santa Ana, CA
5 92701, the Honorable Douglas F. McCormick presiding, plaintiff Ameris Bank,
6 doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) will, and
7 hereby does, apply for an entry of default judgment pursuant to Federal Rules of
8 Civil Procedure Rule 55 and Local Rules 55-1, 55-2, and 55-3, against defendants
9 GIC Logistics Inc., a Wisconsin corporation (“GIC”), Ion Chistruga, an individual
10 (“Ion”), and Nina Chistruga, an individual (“Nina”) (collectively with GIC and Ion,
11 “Defendants”), for a judgment amount of **\$157,200.89**.

12 PLEASE TAKE FURTHER NOTICE that Balboa seeks a default judgment
13 against Defendants in the total amount of \$157,200.89, as Balboa has established
14 (a) a sum certain due and owing by Defendants to Balboa pursuant to the
15 Equipment Financing Agreement, Guaranty No. 1, and Guaranty No. 2 entered into
16 by Defendants and Balboa; (b) that Defendants are not in military service and are
17 neither a minor or incompetent person; and (c) costs and attorneys’ fees are
18 properly awardable.

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1 PLEASE TAKE FURTHER NOTICE that this motion is based on this
2 Notice of Motion, the supporting Memorandum of Points and Authorities, the
3 supporting declarations of Jared T. Densen and Don Ngo, and the exhibits attached
4 thereto, the pleadings and papers filed in this action, and upon such further briefing,
5 authorities, and argument submitted to the Court prior to, or during, the hearing on
6 this matter.

7
8 DATED: August 14, 2025

SALISIAN | LEE LLP

9
10 By: 

11 Jared T. Densen
12 Neal S. Salisian
13 Patty W. Chen

14 Attorneys for Plaintiff
15 AMERIS BANK d/b/a BALBOA CAPITAL
16 CORPORATION
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION AND RELEVANT FACTS

Plaintiff Ameris Bank, a Georgia state-chartered banking corporation, doing business as Balboa Capital Corporation (“Plaintiff” or “Balboa”) submits the instant Motion for Default Judgment against defendants GIC Logistics Inc., a Wisconsin corporation (“GIC”), Ion Chistruga, an individual (“Ion”), and Nina Chistruga, an individual (“Nina”) (collectively with GIC and Ion, “Defendants”).

a. The Equipment Financing Agreement.

This action involves a claim for damages by Balboa against Defendants for breach of the written Equipment Financing Agreement No. 450001-001 (the “EFA”), and breach of the corresponding personal guaranties of that agreement. [See Declaration of Don Ngo (“Ngo Decl.”), ¶3, Exh. A-C.]

Specifically, Balboa, on the one hand, and GIC, Ion, and Nina, on the other, entered into the EFA on or about July 26, 2023. [See *id.*] Under the terms of the EFA, Balboa loaned to GIC the sum of \$286,166.00, in order to finance equipment for its business (the “Collateral”). [See *id.*]

Concurrent with the execution of the EFA, and in order to induce Balboa to enter into the EFA with GIC, Ion personally guaranteed, in writing, the payment of the then-existing and future indebtedness due and owing to Balboa under the terms of the EFA (“Guaranty No. 1”). [See *id.*, ¶4, Exh. B.] Balboa relied on such Guaranty No. 1 to finance the Collateral for GIC’s business. [See *id.*]

Also concurrent with the execution of the EFA, and in order to induce Balboa to enter into the EFA with GIC, Nina personally guaranteed, in writing, the payment of the then-existing and future indebtedness due and owing to Balboa under the terms of the EFA (“Guaranty No. 2”). [See *id.*, ¶5, Exh. C.] Balboa relied on such Guaranty No. 2 to finance the Collateral for GIC’s business. [See *id.*]

Under the EFA, GIC was required to make sixty (60) monthly payments of \$5,933.39, beginning on August 29, 2023. [See *id.*, ¶6, Exh. A.] The last payment received by Balboa was credited toward the payment due for February 28, 2025. [See *id.*, Exh. D.] Therefore, on March 29, 2025, GIC breached the EFA, Ion breached Guaranty No. 1, and Nina breached Guaranty No. 2, by failing to make the monthly payment due on that date, and thus, both have remained continuously in default. [See *id.*]

At the time of Defendants' default there remained forty-two (42) monthly payments, for a total of \$208,055.40, due to Balboa. [See *id.*, ¶7.] Defendants have since failed to make further payments. [See *id.*]

Following Defendants' default, Balboa repossessed and sold the Collateral. [See *id.*, ¶8.] Balboa has therefore credited Defendants' account in the amount of \$64,846.25. [See *id.*] Thus, **\$143,209.15** remains due to Balboa. [See *id.*]

In addition, based on the amount due of \$143,209.15, Balboa is entitled to prejudgment interest at the statutory rate of ten percent (10%) per annum, from March 29, 2025, the date of breach, to September 16, 2025, the date noticed for the hearing of this Motion for Default Judgment ("Default Motion"), for a total interest amount of **\$6,747.56**, accruing at a rate of **\$39.23 per day**, until the entry of judgment. [See *id.*, ¶9; see also Declaration of Jared T. Densen ("Densen Decl."), ¶¶5-6.]

b. Attorneys' Fees and Costs

Pursuant to the "Default and Remedies" section of the EFA, Balboa is entitled to recover its attorneys' fees and costs from Defendants. [See Densen Decl., ¶7.] The amount of reasonable attorneys' fees is fixed by Local Rule 55-3, in the sum of **\$6,464.18**. [See *id.*] Balboa has indeed incurred **\$780.00**, in recoverable costs - \$405.00 for filing of the First Amended Complaint, \$125.00 for the service of process fees for GIC, \$125.00 for the service of process of Ion, and \$125.00 for the service of process fees for Nina. [See *id.*, Exh. F.]

1 **c. Default Judgment Motion**

2 Balboa’s Default Motion satisfies the procedural requirements of Local Rule
3 55-1 and 55-2, and Federal Rule of Civil Procedure 55(b). Balboa filed its First
4 Amended Complaint and case-initiating documents on May 21, 2025. [See Dkts. 2,
5 4, 7-8.] Defendants GIC, Ion, and Nina were properly served on June 16, 2025,
6 pursuant to Federal Rule of Civil Procedure 4. [See Dkts. 10-12.] On July 9, 2025,
7 Balboa filed its Request for Clerk to Enter Default against defendants GIC, Ion, and
8 Nina (the “Default Entry Request”), and the Clerk entered default against each of
9 the defendants on July 10, 2025. [See Dkt. 14, 16.]

10 Defendant GIC is a Wisconsin corporation, and is not a minor, incompetent
11 person, or a person in military service or otherwise exempted from default
12 judgment under the Servicemembers Civil Relief Act of 1940 (the “SCRA”). [See
13 Densen Decl., ¶4.] Further, defendant Ion and Nina are not minors, incompetent
14 persons, or persons in military service or otherwise exempted from default
15 judgment under the SCRA. [See *id.*, Exh. D.]

16 Moreover, this Court has subject matter jurisdiction over the instant action.
17 The amount in controversy, as alleged in the First Amended Complaint and as set
18 forth herein, exceeds \$75,000. [See Dkt. 1; *see also* Densen Decl., ¶8.] Plaintiff
19 Balboa was and still operates as a California corporation, with its principal place of
20 business in Orange County, California. [See Dkt. 1, ¶1; *see also id.*] Balboa is also
21 now a wholly owned subsidiary of Ameris Bank, and operating as a division of
22 Ameris Bank, a Georgia state-chartered banking corporation, and accordingly,
23 Balboa is a citizen of the State of California, as well as the State of Georgia, via its
24 parent company, Ameris Bank. [See *id.*]

25 Based upon research, and upon information and belief, Defendant GIC is a
26 Wisconsin corporation, incorporated in Wisconsin, and with its principal place of
27 business in Wisconsin. [See *id.*, ¶9, Exh. F.] Thus, GIC is a citizen of the State of
28 Wisconsin. [See *id.*] Also, based upon research, and upon information and belief,

1 including the Driver's License Ion submitted to Balboa, Ion is domiciled at
2 Wisconsin Dells, WI 53965. [See *id.*] Thus, Ion is a citizen of the State of
3 Wisconsin. [See *id.*] Finally, based upon research, and upon information and
4 belief, including the Driver's License Nina submitted to Balboa, Nina is domiciled
5 at Wisconsin Dells, WI 53965. [See *id.*] Thus, Nina is a citizen of the State of
6 Wisconsin. [See *id.*] As such, there exists complete diversity amongst the Plaintiff
7 and Defendants. [See *id.*, ¶10.]

8 As set forth below, a default judgment should be entered against each of the
9 Defendants since Balboa satisfies all seven factors under *Eitel*. Moreover, Balboa
10 has adequately proven its damages. Thus, Balboa respectfully requests that this
11 Court grant its request for a default judgment against Defendants in the amount of
12 **\$157,200.89**.

13 **II. LEGAL ARGUMENT**

14 “When a party against whom a judgment for affirmative relief is sought has
15 failed to plead or otherwise defend,” the Court may enter a judgment of default
16 upon Plaintiff's application after an entry of default. See Fed. R. Civ. P. 55. Local
17 Rule 55 sets forth the procedural requirements that must be satisfied by a party
18 moving for a default judgment. Balboa's Motion has satisfied such requirements.

19 Here, Balboa filed its First Amended Complaint and case-initiating
20 documents on May 21, 2025. [See Dkts. 2, 4, 7-8.] Defendants GIC, Ion, and Nina
21 were properly served on June 16, 2025, pursuant to Federal Rule of Civil Procedure
22 4. [See Dkts. 10-12] On July 9, 2025, Balboa filed its Default Entry Request
23 against each of the defendants and the Clerk entered default against each of the
24 defendants on July 10, 2025. [See Dkt. 14, 16.]

25 Defendant GIC is a Wisconsin corporation, and is not a minor, incompetent
26 person, or a person in military service or otherwise exempted from default
27 judgment under the SCRA. [See Densen Decl., ¶4.] Further, defendant Ion and
28

1 Nina are not a minors, incompetent persons, or persons in military service or
 2 otherwise exempted from default judgment under the SCRA. [*See id.*, Exh. D.]

3 The Ninth Circuit follow the seven *Eitel* factors in deciding whether to enter
 4 a default judgment:

5 (1) the possibility of prejudice to the plaintiff; (2) the merits
 6 of plaintiff's substantive claim; (3) the sufficiency of the
 7 complaint; (4) the sum of money at stake in the action; (5)
 8 the possibility of a dispute concerning material facts; (6)
 whether the default was due to excusable neglect; and (7)
 the strong policy underlying the Federal Rules of Civil
 Procedure favoring decisions on the merits.

9 *Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986). A plaintiff need not
 10 prove that all seven factors weigh in its favor, as courts *may* consider these factors
 11 in their discretion on whether to enter a default judgment. *See id.*

12 Here, the underlying facts in this action show that all seven of the *Eitel*
 13 factors weigh in Balboa's favor, and thus, supports the entry of default judgment.

14 **A. Plaintiff Will Be Highly Prejudiced If Its Default Judgment**
 15 **Motion Is Denied.**

16 A situation in which a plaintiff will be without any other recourse or recovery
 17 should its default judgment application be denied qualifies as prejudice. *See*
 18 *PepsiCo, Inc. v. Cal. Sec. Cans*, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

19 Here, Balboa has submitted its Motion for Default Judgment as a last resort
 20 due to Defendants' deliberate unwillingness to accept responsibility for its actions
 21 or even acknowledge Balboa's allegations.

22 The fact remains that Balboa, pursuant to the EFA, financed the Collateral
 23 for Defendants, with Defendants agreeing to make sixty (60) monthly payments of
 24 \$5,933.39, for which forty-two (42) monthly payments, for a total of \$208,055.40,
 25 still remained due to Balboa at the time of Defendants' default. [*See* Ngo Decl.,
 26 ¶¶6-7, Exhs. A, D.] Following Defendants' default, Balboa repossessed and sold
 27 the Collateral. [*See id.*, ¶8.] Balboa has therefore credited Defendants' account in
 28

1 the amount of \$64,846.25. [*See id.*] Thus, **\$143,209.15** remains due to Balboa.
 2 [*See id.*]

3 Balboa filed its First Amended Complaint in this action to recover the monies
 4 owed on it, but Defendants have been unwilling to participate in, or otherwise
 5 acknowledge, the litigation. Balboa's Motion for Default Judgment is its final
 6 option for an attempt at recovery, and without the Court granting the default
 7 judgment, Balboa will be prejudiced and be denied its right to a judicial resolution
 8 of its presented claims. *See PepsiCo*, 238 F. Supp. 2d at 1177.

9 Moreover, if Balboa's Motion for Default Judgment is denied, it will suffer a
 10 significant loss due to no fault of its own, and Defendants will obtain a significant
 11 windfall of over \$157,200.89. Not only will the deliberate nonaction by
 12 Defendants and their continued stalling techniques be unjustly rewarded, but
 13 Balboa will effectively be penalized for its procedurally proper demands for the
 14 return of its monies available through the court system's proper channels.

15 Balboa will be substantially prejudiced, especially with no other available
 16 recourse, should its Motion for Default Judgment be denied, and thus, further
 17 supports the Default Judgment against Defendants to be granted by this Court.

18 **B. Plaintiff Has A High Likelihood Of Success On The Merits Of Its**
 19 **Substantive Claims And Its First Amended Complaint Is**
 20 **Sufficiently Pled.**

21 "The general rule of law is that upon default[,] the factual allegations of the
 22 complaint, except those relating to the amount of damages, will be taken as true."
 23 *Geddes v. United Fin. Group*, 559 F.2d 557, 560 (9th Cir. 1977). Courts often
 24 consider the second (merits of the claim) and third (sufficiency of the complaint)
 25 factors under *Eitel* together. *See PepsiCo*, 238 F. Supp. 2d at 1177.

26 The elements for a breach of contract are: (1) the existence of a contract, (2)
 27 performance by the plaintiff of its obligations under the contract, (3) breach of the
 28 contract by the defendant, and (4) resulting damages proximately caused by the

1 defendant's breach of contract. *Reichert v. Gen. Ins. Co.*, 68 Cal.2d 822, 830
2 (1968); *Acoustics, Inc. v. Trepte Constr. Co.*, 14 Cal.App.3d 887, 916 (1971); *see*
3 *also* Civ. Code §§ 1620, 3300; and RESTATEMENT 2d. CONTRACTS § 235(2).

4 Here, all elements are met. Specifically, Balboa, on the one hand, and GIC,
5 Ion, and Nina, on the other, entered into the EFA, under which Balboa loaned to
6 GIC the sum of \$286,166.00, in order to finance the Collateral for its business.
7 [See Ngo Decl., ¶3, Exh. A.]

8 Concurrent with the execution of the EFA, and in order to induce Balboa to
9 enter into the EFA with GIC, Ion personally guaranteed, in writing, the payments of
10 the then-existing and future indebtedness due and owing to Balboa under the terms
11 of the EFA via Guaranty No. 1. [See *id.*, ¶4, Exh. B.] Balboa relied on such
12 Guaranty No. 1 to agree to finance the Collateral for GIC's business. [See *id.*]

13 Also concurrent with the execution of the EFA, and in order to induce Balboa
14 to enter into the EFA with GIC, Nina personally guaranteed, in writing, the
15 payments of the then-existing and future indebtedness due and owing to Balboa
16 under the terms of the EFA via Guaranty No. 2. [See *id.*, ¶5, Exh. C.] Balboa
17 relied on such Guaranty No. 2 to agree to finance the Collateral for GIC's business.
18 [See *id.*]

19 Under the EFA, GIC was required to make sixty (60) monthly payments of
20 \$5,933.39, beginning on August 29, 2023. [See *id.*, ¶6.] The last payment received
21 by Balboa was credited toward the payment due for February 28, 2025. [See *id.*,
22 Exh. D.] Therefore, on March 29, 2025, GIC breached the EFA, Ion breached
23 Guaranty No. 1, and Nina breached Guaranty No. 2, by failing to make the monthly
24 payment due on that date, and thus, both have remained continuously in default.
25 [See *id.*]

26 At the time of Defendants' default there remained forty-two (42) monthly
27 payments, for a total of \$208,055.40, due to Balboa. [See *id.*, ¶7.] Defendants have
28 since failed to make further payments. [See *id.*]

1 Following Defendants' default, Balboa repossessed and sold the Collateral.
 2 [See *id.*, ¶8.] Balboa has therefore credited Defendants' account in the amount of
 3 \$64,846.25. [See *id.*] Thus, **\$143,209.15** remains due to Balboa. [See *id.*]

4 There is no doubt, and it cannot be disputed that: (1) Balboa and Defendants
 5 entered into the EFA; (2) Ion personally guaranteed, in writing, the payments of the
 6 then-existing and future indebtedness due and owing to Balboa under the terms of
 7 the EFA via Guaranty No. 1; (3) Nina personally guaranteed, in writing, the
 8 payments of the then-existing and future indebtedness due and owing to Balboa
 9 under the terms of the EFA via Guaranty No. 2; (4) GIC received the loan in order
 10 to finance the Collateral for its business; (5) Defendants ceased making payments
 11 pursuant to the EFA; and (6) Balboa has suffered and continues to suffer damages
 12 due to Defendants' continued nonpayment under the EFA. Thus, Balboa has a
 13 substantially high likelihood in succeeding on the merits of its claims. In fact, no
 14 known defenses exist to any of the material facts.

15 **C. The Sum Of Money At Stake Favors An Entry Of A Default**
 16 **Judgment Against Defendants.**

17 As a general rule, courts factor the sum of money at stake on a case-by-case
 18 basis, and in relation to the other factors influencing whether to enter default
 19 judgment. *See Eitel*, 782 F.2d at 1472 (default judgment was denied where plaintiff
 20 was seeking \$3 million in damages *and* the parties disputed material facts). This
 21 requires the court to assess whether the recovery sought is proportional to the harm
 22 caused by defendant's conduct. *See Walters v. Statewide Concrete Barrier, Inc.*,
 23 No. C 04-2559 JSW, 2006 WL 2527776, at *4 (N.D. Cal. Aug. 30, 2006) (“[i]f the
 24 sum of money at issue is reasonably proportionate to the harm caused by the
 25 defendant's actions, then default judgment is warranted”).

26 In *Penpower Tech, Ltd. v. S.P.C. Tech.*, 627 F. Supp. 2d 1083 (N.D. Cal.
 27 2008), despite reasoning that plaintiff's request for \$677,075.37 in treble damages,
 28 \$500,000.00 in punitive damages, \$100,000.00 in statutory damages, attorneys'

1 fees of \$16,497.00, and costs of \$2,005.00, were “speculative” and weighed against
2 default judgment, the court nevertheless granted plaintiff’s default judgment.

3 Here, Balboa seeks compensatory damages pursuant to the EFA in the
4 amount of **\$143,209.15**; prejudgment interest from March 29, 2025, the date of
5 breach, to September 16, 2025, the date noticed for the hearing of this Default
6 Motion, in the amount of **\$6,747.56**, plus **\$39.23 per day** until the entry of
7 judgment; statutory attorneys’ fees, in the amount of **\$6,464.18**; and costs in the
8 amount of **\$780.00**. [See Densen Decl., ¶¶5-7, Exh. E.] The damages sought are
9 contractually-based and arise out of the clear terms and obligations of the EFA; the
10 prejudgment interest was calculated at the statutory rate of ten percent (10%) per
11 annum; and the attorneys’ fees requested are fixed by Local Rule 55-3. [See *id.*,
12 ¶7.]

13 As such, the sum of money sought is reasonable and far from speculative. It
14 is also substantially less than the \$3 million sought in *Eitel*, in which this sum, and
15 other factors, weighed in the favor of denying default judgment. And it is also
16 substantially less than the roughly \$1.3 million sought in *Penpower Tech*, in which
17 default judgment was granted, despite the sum of money being deemed
18 “speculative.”

19 Thus, the sum of money sought in this action weighs in the favor of granting
20 default judgment, especially in the light of the other seven *Eitel* factors, and due to
21 the certainty and reasonableness of the sum.

22 **D. There Are No Material Facts That Are Reasonably In Dispute.**

23 “The general rule of law is that upon default[,], the factual allegations of the
24 complaint, except those relating to the amount of damages, will be taken as true.”
25 See *Geddes, supra*, 559 F.2d at 560. Where a plaintiff’s complaint is well-pleaded
26 and the defendants make no effort to properly respond, the likelihood of disputed
27 facts is very low. See *Landstar Ranger, Inc. v. Parth Enters, Inc.*, 725 F. Supp. 2d
28 916, 921 (C.D. Cal. 2010).

1 As thoroughly detailed in Section II.B., *supra*, there are no material facts that
2 are reasonably in dispute.

3 Here, specifically, Balboa, on the one hand, and GIC, Ion, and Nina, on the
4 other, entered into the EFA on or about July 26, 2023. [See Ngo Decl., ¶3, Exh. A.]
5 Under the terms of the EFA, Balboa loaned to GIC the sum of \$286,166.00, in
6 order to finance the Collateral for its business. [See *id.*]

7 Concurrent with the execution of the EFA, and in order to induce Balboa to
8 enter into the EFA with GIC, Ion personally guaranteed, in writing, the payments of
9 the then-existing and future indebtedness due and owing to Balboa under the terms
10 of the EFA via Guaranty No. 1. [See *id.*, ¶4, Exh. B.] Balboa relied on such
11 Guaranty No. 1 to agree to finance the Collateral for GIC's business. [See *id.*]

12 Also concurrent with the execution of the EFA, and in order to induce Balboa
13 to enter into the EFA with GIC, Nina personally guaranteed, in writing, the
14 payments of the then-existing and future indebtedness due and owing to Balboa
15 under the terms of the EFA via Guaranty No. 2. [See *id.*, ¶5, Exh. C.] Balboa
16 relied on such Guaranty No. 2 to agree to finance the Collateral for GIC's business.
17 [See *id.*]

18 Under the EFA, GIC was required to make sixty (60) monthly payments of
19 \$5,933.39, beginning on August 29, 2023. [See *id.*, ¶6, Exh. A.] The last payment
20 received by Balboa was credited toward the payment due for February 28, 2025.
21 [See *id.*, Exh. D.] Therefore, on March 29, 2025, GIC breached the EFA, Ion
22 breached Guaranty No. 1, and Nina breached Guaranty No. 2, by failing to make
23 the monthly payment due on that date, and thus, both have remained continuously
24 in default. [See *id.*]

25 At the time of Defendants' default there remained forty-two (42) monthly
26 payments, for a total of \$208,055.40, due to Balboa. [See *id.*, ¶7.] Defendants have
27 since failed to make further payments. [See *id.*]
28

1 Following Defendants' default, Balboa repossessed and sold the Collateral.
2 [See *id.*, ¶8.] Balboa has therefore credited Defendants' account in the amount of
3 \$64,846.25. [See *id.*] Thus, **\$143,209.15** remains due to Balboa. [See *id.*]

4 Defendants cannot dispute any of the facts in any way or make any
5 reasonable arguments surrounding any of the material facts in this action. If
6 anything, Defendants' refusal to participate in, or even acknowledge the litigation,
7 is evidence that no such defense exists.

8 **E. Defendants' Defaults Are Not The Result Of Excusable Neglect.**

9 Excusable neglect is not found where a defendant who was properly served
10 simply ignored the deadline to respond. See *NewGen, LLC v. Safe Cig, LLC*, 804
11 F.3d 606, 616 (9th Cir. 2016) (adding that defendant's counsel contacting plaintiff's
12 counsel after default had been entered did not constitute to "excusable neglect"). In
13 fact, courts have required some showing of good faith by the defaulted defendant to
14 constitute "excusable neglect." See *Eitel*, 782 F.2d at 1471-72 (defendant's failure
15 to answer was held to be excusable neglect in light of ongoing settlement
16 negotiations); *Draper v. Coombs*, 792 F.2d 915, 924 (9th Cir. 1986) (finding
17 excusable neglect where defendant filed an answer past the deadline and on the
18 same day that the motion for default judgment was filed); *O'Connor v. State of*
19 *Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (excusable neglect was found where
20 defendant has good faith of a timely answer); *Educational Serv., Inc. v. Maryland*
21 *State Board for Higher Education*, 710 F.2d 170, 176 (4th Cir. 1983) (excusable
22 neglect found where defendant had appeared in the action and opposed a request for
23 a preliminary injunction in which the party had set forth its defenses); *McKnight v.*
24 *Webster*, 499 F.Supp. 420, 424 (E.D. PA 1980) (excusable neglect found where
25 defendant sought an extension of time to respond, but a default judgment was
26 sought in the interim).

27 Where the defendants "were properly served with the Complaint, the notice
28 for the entry of default, as well as documents in support of the instant [default

1 judgment application],” favors this factor for the entry of default judgment. *See*
2 *Shanghai Automation Instrument Co. Ltd. v. Kuei*, 194 F. Supp. 2d 995, 1005 (N.D.
3 Cal. 2001).

4 Here, Defendants failed to make any showing whatsoever that their
5 unwillingness to participate in the litigation stemmed from, or was in any way due
6 to, excusable neglect. Defendant GIC and Ion were properly served with the First
7 Amended Complaint documents by personally leaving copies of them with Ion,
8 individually and as the registered agent for service of process of defendant GIC, at
9 1505 Deerwood Trl, Wisconsin Dells, WI 53965. [See Dkts. 10-11.] Defendant
10 Nina was properly served with the First Amended Complaint documents by
11 personally leaving copies of them with Nina, at 1505 Deerwood Trl, Wisconsin
12 Dells, WI 53965. [See Dkt. 12.]

13 Further, Defendants were additionally served at the same addresses thereafter
14 with the Default Entry Request. [See Dkt. 14.] Defendants have not yet made any
15 appearance in the action, and thus, have not made any effort to answer, defend, or
16 otherwise participate, in this action.

17 As detailed above, courts have found for excusable neglect only in cases in
18 which a defendant makes good faith showing that the defendant attempts to
19 participate in the litigation to address and defend the allegations set forth against the
20 defendant. Declining to respond to a complaint after proper service (even in the
21 case where defendant’s counsel contacts plaintiff’s counsel after the entry of
22 default), does not warrant a finding of excusable neglect. *See NewGen*, 804 F.3d at
23 616.

24 Here, Defendants have failed to acknowledge their wrongdoings and the
25 allegations they face, even in the slightest degree. Instead, Defendants have
26 blatantly ignored Balboa’s First Amended Complaint and all other papers filed
27 thereafter. Rather, Defendants’ course of action in response to Balboa’s First
28

1 Amended Complaint, or the apparent lack thereof, is intentional, and thus, would
2 not constitute excusable neglect.

3 **F. Policy Concerns Favor Default Judgment In This Matter.**

4 Although courts have expressed that as a general rule, policy favors decisions
5 on the merits, cases should be decided on its merits only when *reasonably possible*.
6 *See Pena v. Seguros La Comercia, S.A.*, 770 F.2d 811, 814 (9th Cir. 1985)
7 (emphasis added). The policy preference to decide a case on its merits is not
8 dispositive, and thus, does not preclude a court from granting a default judgment.
9 *See Penpower Tech, Ltd.*, 627 F.Supp.2d at 1093 (defendants' failure to respond to
10 a Complaint makes a case decision on its merits impractical, if not, impossible).

11 Here, even the policy concerns to decide a case on its merits favor Balboa to
12 grant Balboa's request for a default judgment. As detailed in II.E., *supra*,
13 Defendants have made it abundantly clear that they will not participate in this
14 litigation, or even acknowledge the instant action. Defendants have deliberately
15 chosen a course of action to simply ignore Balboa and its claims against them,
16 including their own liability. Thus, the Court's decision will not be based on the
17 merits of this case since there is no reasonable possibility at this point given
18 Defendants' refusal to participate in this litigation.

19 Moreover, policy concerns certainly do not weigh in favor of rewarding
20 Defendants for their unwillingness to account for their liability to Balboa, and the
21 extremely prejudicial windfall they would receive should their deliberate silence
22 and stalling techniques be rewarded, at Balboa's expense. *See* Section II.A., *supra*.

23 **G. Plaintiff Has Proven Its Damages.**

24 Under the EFA, GIC was required to make sixty (60) monthly payments of
25 \$5,933.39, beginning on August 29, 2023. [*See id.*, ¶6, Exh. A.] The last payment
26 received by Balboa was credited toward the payment due for February 28, 2025.
27 [*See id.*, Exh. D.] Therefore, on March 29, 2025, GIC breached the EFA, Ion
28 breached Guaranty No. 1, and Nina breached Guaranty No. 2, by failing to make

1 the monthly payment due on that date, and thus, both have remained continuously
2 in default. [*See id.*]

3 At the time of Defendants' default there remained forty-two (42) monthly
4 payments, for a total of \$208,055.40, due to Balboa. [*See id.*, ¶7.] Defendants have
5 since failed to make further payments. [*See id.*]

6 Following Defendants' default, Balboa repossessed and sold the Collateral.
7 [*See id.*, ¶8.] Balboa has therefore credited Defendants' account in the amount of
8 \$64,846.25. [*See id.*] Thus, **\$143,209.15** remains due to Balboa. [*See id.*]

9 In addition, based on the amount due of \$143,209.15, Balboa is entitled to
10 prejudgment interest at the statutory rate of ten percent (10%) per annum, from
11 March 29, 2025, the date of breach, to September 16, 2025, the date noticed for the
12 hearing of this Default Motion, for a total interest amount of **\$6,747.56**, accruing at
13 a rate of **\$39.23 per day**, until the entry of judgment. [*See id.*, ¶9; *see also* Densen
14 Decl., ¶¶5-6.]

15 Pursuant to the "Default and Remedies" section of the EFA, Balboa is
16 entitled to recover its attorneys' fees and costs from Defendants. [*See* Densen
17 Decl., ¶7.] The amount of reasonable attorneys' fees is fixed by Local Rule 55-3,
18 in the sum of **\$6,464.18**. [*See id.*] Balboa has indeed incurred **\$780.00**, in
19 recoverable costs - \$405.00 for filing of the First Amended Complaint, \$125.00 for
20 the service of process fees for GIC, \$125.00 for the service of process of Ion, and
21 \$125.00 for the service of process fees for Nina. [*See id.*, Exh. E]

22 Altogether, this totals out to **\$157,200.89** (as of September 16, 2025),
23 calculated as follows:

24	- Amount owed:	\$143,209.15
25	- Prejudgment Interest:	\$ 6,747.56
26	- Attorneys' Fees:	\$ 6,464.18
27	- <u>Recoverable Costs:</u>	<u>\$ 780.00</u>
28	- Total:	<u>\$157,200.89</u>

1 **III. CONCLUSION**

2 Based on Balboa's First Amended Complaint, Default Judgment Motion, and
3 all supporting papers, Balboa respectfully requests that the Court grant its Default
4 Judgment Motion against Defendants, in the total amount of **\$157,200.89**.

5
6 DATE: August 14, 2025

SALISIAN | LEE LLP

7
8 By: 

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10 Neal S. Salisian

11 Patty W. Chen

12 Attorneys for Plaintiff
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